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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/569,857	10/03/2006	Achim Von Othegraven	VON OTHEGRAVEN-1PCT	3426
25889	7590	06/24/2009	EXAMINER	
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			SHOME, ARUNDIPTA	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/569,857	<b>Applicant(s)</b> VON OTHEGRAVEN, ACHIM	
	<b>Examiner</b> ARUNDIPTA SHOME	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 17-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2-28-2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 17-25 are pending. This Action is in response to the preliminary amendment filed on 2-28-2006. Claims 1-16 have been cancelled as directed by Applicant's amendment.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 19 is rejected under 35 U.S.C. 101 for reciting non-statutory subject matter.

Regarding Claim 19, the claimed invention is directed to non-statutory subject matter for claiming human body parts. Claim 19 recites "the pelvic area" and "the chest area" on line 4-6. Examiner suggests using -- adapted to rest below the pelvic area -- and -- adapted to rest below the chest area -- to avoid claiming a human body part.

4.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 17-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 17, it is unclear if the operating elements recited on line 5 are the same as the operating elements recited on line 12. Does Applicant intend to recite "each of said plurality of operating elements" on line 12?

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Also for Claim 17, Applicant recites a frequency of below 100 Hz in line 4, but on lines 7-12 several frequency ranges are recited. It is not clear whether applicant is attempting to claim a range of below 100 HZ or only the claimed discrete frequency bands that are assigned to the operating elements.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murtonen (US Patent 5,113,852) in view of Howard (US Patent 6,011,852).

Regarding Claim 17, Murtonen discloses a contact surface for the patient (the chair in Figure 1), at least one acoustic body (2a) being attached below the contact surface, which generates sound waves having a frequency below 100 Hz (col. 4, line 16), which lie within predefined, discrete frequency bands(20-200 Hz), and an Operating unit 1 having multiple operating elements (8a,8b, Fig. 2) for activating the at least one acoustic body (2a) being provided, wherein a first frequency band extends from 31 Hz to 33 Hz, a second frequency band extends from 35.5 Hz to 37.5 Hz, a third frequency band extends from 40 Hz to 42.5 Hz, a fourth frequency band extends from 44.5 Hz to 46.5 Hz, a fifth frequency band extends from 49 Hz to 51 Hz, a sixth frequency band extends from 54 Hz to 56 Hz, and a seventh frequency band

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extends from 58.5 Hz to 60.5 Hz (Murtonen's device operates at 20-200 Hz, so all of these ranges are capable of being delivered by Murtonen's device),

Murtonen has operating elements 8a, 8b but lacks operating element being assigned to each of these discrete frequency bands and allowing its selection. Howard teaches frequency control system 80 in Figure 5 with operating elements being assigned to discrete frequency bands and controlling a selection of each frequency band. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the controller-regulator (1) of Murtonen to include operating elements for controlling the selection of discrete frequency bands, as taught by Howard, so that a user can select and adjust optimal frequency ranges for massage vibration.

Regarding Claim 18, Murtonen discloses that two acoustic bodies can be used (col. 3, line 53).

Regarding Claim 19, the acoustic bodies are positioned below the contact surface so that when a patient reclines on the contact surface, one acoustic body is below the pelvic area and one is below the chest (Fig. 1).

Regarding Claim 20, the operating unit 1 has an operating element (7a, 7b) for amplitude modulation (col. 4, line 67).

9. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murtonen in view of Howard as applied to claim 1 above, and further in view of Park (US Patent 3,253,077).

Regarding Claim 21, Murtonen does not disclose a sine wave generator or a pulse shaper converting the sine wave into a sawtooth vibration. Park teaches a sine wave generator 10 and a

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pulse shaper (the capacitor) converting the sine wave into a sawtooth vibration (col. 3, lines 43-51). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Murtonen to include a sine wave generator and pulse shaper to produce a sawtooth wave as taught by Park in order to provide a different pattern of a vibration for a patient other than a sine wave vibration pattern, which increases the types of vibration that the device can provide.

Regarding Claims 22-24, Murtonen does not disclose a pulse shaper converting the sine wave into square waves, triangle waves, or pulse waves. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Murtonen system to provide square waves, triangle waves, or pulse waves in order to provide a different pattern of a vibration for a patient other than a sine wave vibration pattern, which increases the types of vibration that the device can provide.

10. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murtonen in view of Howard as applied to claim 1 above, and further in view of DeVisser (US Patent 5,733,240)

Regarding Claim 25, Murtonen does not disclose a storage medium for audio signals. DeVisser discloses a storage medium (the memory element, col. 1, line 32) for audio signals in bands below 100 Hz. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Murtonen to have a memory element as taught by DeVisser so that a preselected audio vibration can be stored and delivered to a patient.

### ***Conclusion***

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11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McNew (US Patent 6,544,165) discloses a vibration table treatment system.

Skille (US Patent 5,101,810) discloses a vibrating acoustic therapy chair.

Chesky (US Patent 5,035,235) discloses a music vibration table.

Tomecek (US patent 4,112,923) teaches a vibrator for skin with a frequency control knob.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ARUNDIPTA SHOME whose telephone number is (571)270-5539. The examiner can normally be reached on Monday through Friday 9:00am to 6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/ Arun Shome/

Examiner, Art Unit 3771

/Justine R Yu/

Supervisory Patent Examiner, Art Unit 3771